

**From:** dmarker@speakeasy.net@inetgw  
**To:** Microsoft ATR  
**Date:** 1/23/02 5:45pm  
**Subject:** Microsoft Settlement

As a computer professional, I would like to voice a piece of my opinion regarding the proposed settlement to the Microsoft trial. I am wholeheartedly disappointed that such brazen attitudes and disregard for the law and the public should be permitted to go unpunished. I do not believe that the restrictions and remedies planned out in the settlement will be any assistance to preventing Microsoft from further breaking the law and abusing their position of power.

With the growing pressure from Microsoft to use their software in ever increasing roles, the danger of insecurities in their software are mounting daily. Viral plagues have swept over the world's mail and web servers (regardless of the software installed) over the past several months that have cost countless hours and dollars. They have used anti-competitive practices as a monopoly to exclude other vendors from the market. They have been often accused (and with rather well documented evidence against them) of maliciously going out to financially destroy competitors and steal or reverse-engineer their intellectual property. They have been caught blatantly lying in court on this very case with their "simulation" of uninstalling Internet Explorer. I do not feel that any of the remedies presented will effectively change their long-term strategies in any way.

For a single example, the two "top ten" lists for OEM sale of Windows effectively legitimizes the entire pricing scheme that MS used to squeeze our competing licenses from desktop sales.

Furthermore, although I personally detest long legal forms, I dread that Mr. Gates, who quibbled over the definition of "hit team" and "jihad" as used in his internal memorandums will find the legal restraints rather slippery. The legal system does not appear to cope well with rapidly evolving markets and definitions. However, much of the case involves questions on the legal definitions of "Operating System" and "Browser" yet the judgement relies very heavily on the definitions of "middleware", "retaliate", and "reasonably necessary". With this going on, the remedy still gives the definition of "operating system" back to Microsoft with the line: "The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion."

I strongly recommend that the resolution to this case undergo major revisions. I personally think the section regarding the TC has very positive points, even though it has received much criticism. I would push a bit further in trying to extend their scope of investigation, probably by tightening the non-disclosure contract, and use this as a basis for giving the final few steps of access to the software. If they can review all of the (normally private) contracts and question anyone in the company, why should their access to the software source code be limited by an agreement made (and from what I understand, alterable at will) by Microsoft?

Finally, there is one major section lacking from this proposed remedy. There does not appear to be any restitution. This seems to be one large nothing from the Federal Courts. Merely a "Don't do that again" approach. As much as I would like to see several zeros of corporate accounts be redirected to organizations like the Electronic Frontier Foundation, I realize that this at best a questionable act. I think that a series of financial penalties based on a percentage of the gross corporate earnings should first be applied to the company, with even stronger penalties prepared in advance, ready for the possibility that Microsoft may decide to continue to test the mettle of the court system.

Sincerely,

Dan Marker